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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. LAURA ANDERBERG, Defendant and Appellant.	B209613 (Los Angeles County Super. Ct. No. GA071615)

APPEAL from a judgment of the Superior Court of Los Angeles County, Laura F. Priver and Teri Schwartz, Judges. Affirmed.

David Romley for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, James William Bilderback II and David Zarmi, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Following the denial of her motion to suppress evidence (Pen. Code, § 1538.5), defendant Laura Anderberg pled no contest to one count of identity theft (*id.*, § 530.5, subd. (a)). In accordance with the terms of a negotiated plea agreement, the trial court sentenced defendant to state prison for a term of two years and dismissed the remaining 13 counts. Defendant thereafter filed a notice of appeal based on the denial of a motion to suppress evidence under Penal Code section 1538.5.[1] We affirm.

FACTS[2]

On July 12, 2007, Los Angeles County Sheriff's Deputy Christopher Gentner was patrolling in a marked patrol car in La Crescenta a little after midnight. When he passed a house on Encinal Avenue, Andrea Quinn (Quinn) came out of the house, stood on the front porch and waved him down. She said "Hello" and engaged the deputy in conversation. Quinn told Deputy Gentner that it was not her house, but that her friend, defendant, resided there. Deputy Gentner knew defendant from his patrols in the neighborhood and knew that it was not Quinn's house. Quinn had no burglar tools in her hands, but she was acting nervous and had been in a house that was not hers. Deputy Gentner ran a warrant check and found out there were arrest warrants against Quinn, including one for forgery.

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[1] Penal Code section 1538.5, subdivision (m), in pertinent part provides that "[a] defendant may seek further review of the validity of a search or seizure on appeal from a conviction in a criminal case notwithstanding the fact that the judgment of conviction is predicated upon a plea of guilty. Review on appeal may be obtained by the defendant provided that at some stage of the proceedings prior to conviction he or she has moved for the . . . suppression of the evidence."

[2] As defendant pled no contest, this testimony provided the basis for defendant's motion to suppress.

Deputy Gentner placed Quinn under arrest and asked her if she had a key to secure the house. Quinn said she did not; she had entered the house through the back door and did not have a key. Deputy Gentner asked Quinn if there was anyone else in the house, and she stated, "There shouldn't be," and "I don't think there is." Based upon his training and experience as a deputy sheriff for 12 years, Deputy Gentner was concerned that there was a burglary in progress, even though Quinn had no property on her from the residence. He had seen numerous incidents in which a burglar knew the homeowner and was friendly to the police.

Deputy Gentner "called for backup in order to check the house to make sure there wasn't a burglary in progress going on." After stationing a deputy on the side of the house, he called out that the sheriff was there and anyone in the house should come out. When there was no response, he entered the house through the open front door. He immediately saw methamphetamine and a pipe on a coffee table next to the front door. He continued to search the house for a burglar and discovered CD and DVD players, a car navigation system, and a driver's license bearing the name of a woman residing in Brea. He also saw jewelry. After he finished searching the house for burglars, he looked into the detached garage. The garage door was open, and he saw a car with a light on in the garage. This also suggested to Deputy Gentner that there was a burglary in progress.

When Deputy Gentner went back to his patrol car to speak with Quinn, defendant returned home with a male companion. The man appeared to be under the influence of narcotics. After defendant was advised of her constitutional rights, she admitted that the narcotics belonged to her. Defendant stated that the equipment found had been taken home from work with permission. Concerning the vehicle in the garage, defendant stated she did not know if the vehicle was stolen. After a check was run, it was determined that the vehicle was stolen.

Later that day, Deputy Gentner obtained a search warrant and returned to defendant's house with Detective Frank Diana. In a search of the house, Detective Diana found "numerous" credit cards, "hundreds of blank checks, and other financial information belonging to various people."

Detective Delicia Hernandez investigated the documents and information recovered from the house and discovered that more than 10 individuals had their personal information stolen and used by defendant.

DISCUSSION

Defendant contends that the trial court erred in denying her Penal Code section 1538.5 motion to suppress all the items found in her house. Specifically, defendant contends that the warrantless entry by Deputy Gentner was not justified because there was no necessity or emergency. Additionally, there was no logical reason for Deputy Gentner to assume that a burglary was in progress merely because of his encounter with Quinn, or that a burglar would act as Quinn did. We disagree.

The applicable standard of review is well-stated in *People v. Middleton* (2005) 131 Cal.App.4th 732: "In reviewing the denial of a motion to suppress, an appellate court defers to the trial court's express or implied findings of fact that are supported by substantial evidence, but must independently determine the relevant legal principles and apply those principles to the trial court's findings of fact to determine whether the search was constitutionally reasonable. [Citations.] '[T]he power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences, is vested in the trial court.' [Citation.] If factual findings are unclear, the appellate court must infer 'a finding of fact favorable to the prevailing party on each ground or theory underlying the motion.' [Citation.] However, if the undisputed facts establish that the search or seizure was constitutionally unreasonable as a matter of law, the reviewing court is not bound by the lower court's ruling." (*Id.* at pp. 737-738.)

The Fourth Amendment protects against arbitrary and unreasonable searches and seizures in a person's residence (*People v. Middleton, supra,* 131 Cal.App.4th at p. 738.) A residence search conducted without a warrant is presumed to be unreasonable unless it comes within one of the well-established exceptions. (*Ibid.*)

The exception to the warrant requirement relied upon by the prosecutor and the trial court was the existence of exigent circumstances. Exigent circumstances include """emergency situation[s] requiring swift action to prevent imminent danger or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence. There is no ready litmus test for determining whether such circumstances exist, and in each case the claim of an extraordinary situation must be measured by the facts known to the officers."""" (*People v. Wharton* (1991) 53 Cal.3d 522, 577, quoting from *People v. Lucero* (1988) 44 Cal.3d 1006, 1017.) If the facts known to the officers would warrant a person of reasonable caution to believe exigent circumstances existed and an immediate search or seizure was appropriate, the search or seizure will be deemed reasonable. (*People v. McDowell* (1988) 46 Cal.3d 551, 563; *People v. Duncan* (1986) 42 Cal.3d 91, 97-98.)

In *People v. Ray* (1999) 21 Cal.4th 464, at pages 470 through 471 the Supreme Court developed a community caretaker exception to the Fourth Amendment in addition to the exigent circumstances exception. Similarly, in *Brigham City v. Stuart* (2006) 547 U.S. 398 [126 S.Ct. 1943, 164 L.Ed.2d 650], the United States Supreme Court treated emergency aid and community caretaker activities like any other type of exigent circumstances for the purposes of the Fourth Amendment exception.

Whether Deputy Gentner's actions are considered under traditional exigent circumstances or *Ray*'s community caretaker exception, his actions were reasonable. Deputy Gentner was approached late at night by Quinn, who appeared nervous and admitted that she did not belong in the house from which she had emerged. After further inquiry, Deputy Gentner determined that there were arrest warrants for Quinn, including a warrant for forgery. In questioning Quinn, he determined that the homeowner was not present, and Quinn did not know when she would return. Quinn came in through the back door, did not have a key to the residence and was not sure if there was anyone else inside the residence.

Deputy Gentner reasonably believed that Quinn was involved in a burglary of defendant's house and there could still be a burglary in progress. It was equally

reasonable for Deputy Gentner to enter defendant's house in order to protect her property as a community caretaker. He would have been remiss if he had not done anything further based upon the facts presented to him. The warrantless entry therefore fell within the exigent circumstances exception to the warrant requirement.

Defendant's reliance on *People v. Smith* (1972) 7 Cal.3d 282 (*Smith*) and *Horack v. Superior Court* (1970) 3 Cal.3d 720 (*Horack*) to support her contention that Deputy Gentner should not have entered the residence to investigate a possible burglary or protect her property is not persuasive. In *Smith*, a six-year-old child had been left alone in her apartment. The landlord took the child in and called the police. The officer went to the apartment to determine if the child's mother had arrived home. He knocked on the apartment door, identified himself, and received no answer. He had the landlord let him into the apartment. He searched the apartment and found marijuana in the bedroom. The child's mother and defendant, who lived with her, were arrested for the unlawful possession of marijuana. (*Smith*, *supra*, at pp. 284-285.) The Supreme Court upheld the trial court's decision to grant the motion to suppress the marijuana found during the search because there was no risk of injury to life or property. The Court found there was no justification for the search under the "doctrine of necessity." The child was found unharmed, and there was no imminent and substantial threat to life, health, or property to justify a warrantless search. (*Id*. at pp. 285-287.)

In the instant case, however, Deputy Gentner reasonably believed that a burglary was in progress, i.e., there was an imminent threat to defendant's property. He therefore was certainly justified in entering the house to protect the property of the homeowner and to determine if there were any other suspects in the residence.

Horack also does not support defendant's position or contention that the entry to the house was in violation of the Fourth Amendment. In *Horack*, officers received a radio message that a woman had telephoned to report seeing two "hippie-type" individuals with sleeping bags enter what she believed was a vacant residence next door to her. Unable to contact the informant to determine her reliability, an officer went to the house, knocked on the door and received no response. He saw, through a window in the

door, a carpeted room that was bare except for a stereo system, and he heard music playing loudly. The front door was locked and he knocked at the back door. He heard no sound and entered the unlocked back door. During a search for the persons reported to have entered the house, officers discovered hashish and marijuana. (*Horack v. Superior Court, supra,* 3 Cal.3d at pp. 723-724.) The Supreme Court held that the search was unreasonable. First, the only property to be protected was the bare carpeted house containing a stereo system. The officers saw nothing to indicate that there was an immediate threat of damage or destruction. (*Id*. at p. 726.) The Court also determined that there was a lack of probable cause to believe any person had entered without authority, in that the officers did not observe anything indicating there had been an unauthorized entry into the house, and they were unable to contact the informant to verify her information. (*Id*. at p. 727.)

In contrast, Deputy Gentner was not relying on an informant that he was not able to locate or determine reliability. He was relying on his own knowledge, training, and experience. The front door of defendant's house was open, it was late at night, and Quinn was acting nervous. Quinn had outstanding arrest warrants and Deputy Gentner placed her under arrest. Under the circumstances, it was reasonable for him to investigate to determine if there was more than one intruder or burglar.

The trial court here stated that it had read the *Smith* and *Horack* cases and found them distinguishable. The trial court correctly noted that "the facts are distinguishable in that in those cases, the house wasn't left open. They went into the house, which was secured. They had no reason to believe that anything or anyone was inside the house. In this case, the house is left open. [¶] It does appear to the court to be a reasonable action on behalf of the deputy to go into the house to clear the house and secure it, under the circumstances confronted to him by Ms. Quinn." We agree with the trial court that the warrantless search was justified.

The judgment is affirmed.

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JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.